

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA

V.

MICHAEL AARON JAYNE

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A-12-CR-401 SS

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

TO: THE HONORABLE SAM SPARKS
UNITED STATES DISTRICT JUDGE

The Magistrate Court submits this Report and Recommendation to the District Court pursuant to 28 U.S.C. § 636(b)(3). The District Court referred this case to the United States Magistrate Judge for the taking of the defendant's felony guilty plea and for his allocution pursuant to Federal Rule of Criminal Procedure 11.

On December 18, 2013, the defendant and counsel appeared before the Magistrate Court. The undersigned addressed the defendant personally in open court, informed him of the admonishments under Rule 11 of the Federal Rules of Criminal Procedure, and determined that he understood those admonishments.

Pursuant to a plea agreement, the defendant plead guilty to being a convicted felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (Count One).

The Magistrate Judge finds the following:

1. The defendant, with the advice of his attorney, consented to enter this guilty plea before the Magistrate Judge, subject to final approval and sentencing by the District Judge;
2. The defendant fully understands the nature of the charge against him and possible penalties;
3. The defendant understands his constitutional and statutory rights, understands that his constitutional and statutory rights can be waived, and understands the meaning and effect

of the waiver of his constitutional and statutory rights;

4. The defendant retains the ability to withdraw his plea of guilty which will in turn cancel the plea agreement solely in the event that, during the course of the pretrial investigation by the United States Probation Office, it is determined by United States Probation that the defendant has the qualifying prior criminal convictions for the enhanced penalty provision in 18 U.S.C. §924(e) to apply in the defendant's case at sentencing;
5. The defendant waived his right to appeal and waived his right to challenge his conviction or sentence under 28 U.S.C. §§ 2241 and 2255. The defendant did not waive the right to raise a challenge based on ineffective assistance of counsel and prosecutorial misconduct;
6. The defendant agreed to forfeit all right, title and interest in the following: (a) a Surplus Ammo & Arms Model LOW 15 semiautomatic rifle, SN SA25 125; (b) a Smith & Wesson Model SW9VE semiautomatic handgun, SN DTF4447; and (c) all magazines and ammunition (including both 9mm and .223 cartridges) recovered pursuant to Austin Police Department Offense Number 20 12-1800523, which gave rise to the indictment;
7. The defendant's plea was made freely and voluntarily;
8. The defendant is competent to enter this plea of guilty; and
9. There is a factual basis for this plea.

RECOMMENDATION

The Magistrate Court **RECOMMENDS** the District Court accept the defendant's guilty plea and, after reviewing the presentence investigation report, enter a Final Judgment of guilt against him.

WARNING

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are

being made. The District Court need not consider frivolous, conclusive, or general objections. See *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained within this Report within fourteen (14) days after being served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations and, except upon grounds of plain error, shall bar the party from appellate review of proposed factual findings and legal conclusions accepted by the District Court to which no objections were filed. See 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S. Ct. 466, 472-74 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

To the extent that a party has not been served by the Clerk with this Report & Recommendation electronically, pursuant to the CM/ECF procedures of this District, the Clerk is ORDERED to mail such party a copy of this Report and Recommendation by certified mail, return receipt requested.

SIGNED on December 18, 2012.


MARK LANE
UNITED STATES MAGISTRATE JUDGE